All Purpose Services, Inc. and Butte-Anaconda Painters Local Union #720, International Union of Painters and Allied Trades, AFL-CIO and Gary A. Satterlee. Cases 19-CA-29261 and 19-CA-29318

November 24, 2004 DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon a charge filed by the Union on May 24, 2004, in Case 19–CA–29261, and a charge filed by Gary A. Satterlee on July 12, 2004, in Case 19–CA–29318, the General Counsel issued the consolidated complaint (complaint) on August 31, 2004, against All Purpose Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On October 20, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On October 21, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by September 14, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 8, 2004, notified the Respondent that unless an answer was received by October 15, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Montana corporation, with an office and place of business in Missoula, Mon-

tana, where it is engaged in the business of commercial painting.

The Respondent, during the 12-month period preceding issuance of the complaint, which period is representative of all material times, in the course and conduct of its business operations, sold and shipped goods or provided services from its facilities within the State of Montana to customers outside Montana, or sold and shipped goods or provided services to customers within Montana, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Butte-Anaconda Painters Local Union #720, International Union of Painters and Allied Trades, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act acting on the Respondent's behalf:

> Kevin Petri—Owner Todd Hayes–Foreman

On about the dates set forth opposite their names, the Respondent terminated the employees named below:

Gary Satterlee—April 14, 2004 George Connors—May 10, 2004

The Respondent discharged Connors and Satterlee because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By discharging employees Connors and Satterlee, the Respondent discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having

found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging employees George Connors and Gary Satterlee, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharges of Connors and Satterlee, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, All Purpose Services, Inc., Missoula, Montana, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discharging employees because they assist Butte-Anaconda Painters Local Union #720, International Union of Painters and Allied Trades, AFL-CIO, or any other labor organization, or because they engage in concerted activities.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer George Connors and Gary Satterlee full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.
- (b) Make whole George Connors and Gary Satterlee for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.
- (c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of George Connors and Gary Satterlee, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place desig-

nated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (e) Within 14 days after service by the Region, post at its facility in Missoula, Montana, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered. defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 14, 2004.
- (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees because they assist Butte-Anaconda Painters Local Union #720, International Union of Painters and Allied Trades, AFL-CIO, or any other labor organization, or because they engage in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer George Connors and Gary Satterlee full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, with-

out prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole George Connors and Gary Satterlee for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharges of George Connors and Gary Satterlee, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

ALL PURPOSE SERVICES, INC.